CONCEPT OF FAULT, POST-MARITAL MAINTENANCE OBLIGATION AND DISCRIMINATION OF WOMEN IN TURKISH JUDICIARY SYSTEM

Betul Ozluk and Melek Saral

ABSTRACT

In case of dissolution of a marital union because of divorce, the maintenance obligation is regulated in Article 174[1] and 175[2] of the new Turkish Civil Code of 2002 under the titles 'material compensation' and 'destitution alimony' in Turkish Law, whereby 'fault' (kusur) serves as the key concept to establish both the maintenance obligation and other related concepts; 'no-fault, lesser-fault, and graver fault' are left to Judiciary's discretion. It is striking that the Turkish Judiciary is reaching different conclusions in cases where the acts leading to divorce were committed by the woman compared to those where such acts were committed by the man. This study aims to investigate the nuances between fault assessments on the part of the Turkish and Swiss judiciaries, and by doing so, reveal that discriminating rulings cause a loss of alimony and compensation rights of women due to the differences in such fault assessments. It discusses the Court of Appeals' (Yargıtay) efforts to equalize the faults of spouses, as well as the discriminatory judgements that treat women unjustly. The study makes it clear that the concept of 'equal fault' (eşit kusur), embraced with inspiration from Swiss law, is used as a means by the Turkish judiciary to eliminate women's right to compensation. Through these discriminatory approaches, the Turkish judiciary is violating its obligations imposed by the Constitution to ensure gender equality.

I. INTRODUCTION

In many early civilizations, due to the beliefs of polytheistic religions or economic reasons, women were deprived of their rights to child custody or inheritance, forced into marriage and excluded from social life education and work life (Bozkurt 1996). Before the declaration of the Turkish republic in 1923, Turkey was no exception to this state of affairs. In the Ottoman era (Örücü 2007a, 183), women received only half the inheritance a man would receive under the same circumstances, and they could not act as witnesses in most legal cases. (Çakır 1994, 206,207). The first step towards granting equal rights to Turkish women was taken with the ratification of the 1924 Constitution which regulated 'equality, civil liberties, and women's right to work'. That step was followed by the granting of universal suffrage and the right to be elected in 1934. The new Constitution that took effect in 1982 accelerated the process towards gender equality with the addition of the provisions that 'Family is the foundation of Turkish

society and is based on the equality of spouses'[3]. Women and men have equal rights. The state is under obligation to ensure the realization of such equality.'[4]

The legislature, which was assigned with the task to ensure gender equity by the Constitution, initially revised the Civil Code that dated back to 1926. A true milestone in the quest to ensure gender equality, the new Civil Code came into force on 1 January 2002. With the characteristics of a modernization and westernization program of Turkish society,[5] it completely abolished certain provisions of the former Civil Code that gave the father priority in the exercise of the right to child custody (art. 263), required the wife to reside at the domicile of her husband (art. 21), named the husband as the head of the household (art. 152), required the wife to obtain her husband's permission in order to work (art. 159), and named the husband as the representative of the union (art. 154). In doing so, the legislature intended to revise the status of women where women have to live under the auspices of her husband, can work only with the permission of her husband, have to look after the children but have no say in decisions regarding the children, and stay at home and depend on her husband economically.

However, the legislature's efforts to improve the status of women during marriage were not reflected in the process that follows the end of the marriage. The right to post-marital maintenance in light of the situation of women who had spent their lives taking care of their households and children, was simply omitted. During parliamentary debates about the Code, where all the provisions received approval, any provisions regarding post-marital maintenance rights and assets saw serious debate and led to claims that 'we won't have women burn our money'[6] shouted from the parliament's platform. In the end, the decision was taken to leave the post-marital maintenance obligation as it is (Özdemir-Oktay 2007, 60,61). However, the Swiss Civil Code (ZGB), which served as a source of inspiration for the former Turkish civil code,[7] kept pace with the developments in the world[8] in regard to post-marital maintenance and in 1998 made reforms revising the framework for post-marital maintenance obligations which were the basis of the principle of the attenuation of the element of fault. These were the abolition of Article 151 aZGB (old version of the ZGB), which offered compensation based on the subjective principle of 'fault' with respect to compensation for damages incurred due to divorce and of Article 152 aZGB, concerning the destitution alimony based on the principle of 'post-marriage solidarity'. Instead, the regulation of divorce-related compensation obligations was placed under a single section dedicated to 'alimony' (Unterhalt) in Article 125 ZGB and onwards (Schwenzer 1990, 8). In regulating the alimony framework, the changes replaced the criteria of 'fault' with post-marriage 'need' (Schwenzer 2005, n 1),[9] and substantially enhanced

the situation of women who suffered more compared to men in the aftermath of a divorce, and hence were often the recipients of alimony.

In Turkish Law, two distinct articles about post-divorce material compensation and alimony are still in effect. In this context, the concept of 'fault' still serves as the key concept to establish the post-marital maintenance compensation obligation among the consequences of divorce and women continue to suffer the uncertainty and subjectivity of the concepts of 'no-fault (kusursuzluk), lesser-fault (daha az kusur), and graver fault (ağır kusur)'. Embracing a different interpretation of the concepts compared to the views taken by the Swiss Federal Court at the time when aZGB was still in force, the Court of Appeals (Yargıtay) is reaching different conclusions in cases where the acts leading to divorce were committed by the woman compared to those where such acts were committed by the man. A woman who is deemed to be at 'graver fault' compared to a man who committed the same act can lose her entitlement to alimony. These are not the only discriminatory attitudes embraced by the judiciary, which is in stark ignorance of the obligations imposed by the Constitution to ensure gender equality. The development of the concept of 'equal fault', which is not settled in the Code, leads to yet another aspect of uncertainty regarding fault. Keeping a close eye on the developments since 2002, one can argue that the Yargıtay were influenced by outdated modes of thinking[10] and have been trying to equalize the faults of the spouses, and have avoided a ruling on material compensation in cases where a statement of 'equal fault' is reached. In the end, women who are found to be at graver fault, or whose fault is equal to that of the men who caused the divorce, are left without any remedy.

The Yargıtay's rulings on equal fault are mostly criticized as violating women's rights (Gülbahar 2006, 469-470); (Kerestecioğlu 2006, 451); (Özlük 2016). The legal texts on Civil Law (Feyzioğlu 1986); (Köprülü ve Kaneti 1989); (Tekinay 1990); (Hatemi ve Serozan 1993); (Zevkliler, Acabey ve Gökyayla 1997); (Öztan 2015); (Dural, Öğüz ve Gümüş 2015); (Kılıçoğlu 2016) as well as studies on the financial consequences of divorce (Turhan 1993); (Oğuz 2000); (Ceylan 2006); (Öztan 2000); (Öztan 1997); (Giritlioğlu 2000); (Örücü 2007a); (Kıcalıoğlu 2002), in turn, are confined to the statement that the Yargıtay does not uphold damages awards in cases of 'equal fault'. Aside from such simple and brief references, no significant review of the rulings on 'equal fault' have taken place to determine if the parties are really at equal fault in concrete cases. Furthermore, the source of the 'equal fault' practice was not investigated by any scientific study to see if it was an endemic element of Turkish law, and if similar judgements had been issued in pre-reform Swiss Law which contained comparable provisions before the current

alimony arrangement. Additionally, the discriminatory 'graver fault' assessments stipulated in most alimony judgements have not even been referred to in any academic study.

This study aims to investigate the nuances between fault assessments on the part of Turkish and Swiss judiciaries, and by doing so, reveal that discriminatory rulings cause a loss of alimony and compensation rights of women due to the differences in such fault assessments. The study makes it clear that even the concept of 'equal fault', embraced with inspiration from Swiss law, was used as a means by the Turkish judiciary to eliminate women's right to compensation, and that certain behaviours on the part of women, which are considered examples of equal fault, can be considered graver fault in a perspective on alimony claims. Lastly and, what is worse, a given kind of behaviour can lead to different judgements on the basis of whether the party committing the behaviour is a man or a woman. The first section of this study provides a general description of the post-marital maintenance obligation in Turkish law, analysing the impact of the 'fault' element on the compensation obligation with reference to a categorization of faults. Then follows a discussion of the Yargıtay's efforts to equalize the faults of spouses, as well as the discriminatory judgements that treat women unjustly.

II. THE POST-MARITAL MAINTENANCE OBLIGATION IN TURKISH LAW

At the end of a marriage, the parties' needs are altered completely. Cohabitation in the family residence comes to an end, and there are changes in the overall workload, with, for instance, one of the spouses being obliged to take up work after the divorce. This all leads to substantial cost elements. Furthermore, upon the termination of marriage, the spouses lose the rights they would otherwise have been entitled to in the future, as well as the contribution they are entitled to during marriage.

The divorce process, which is a extremely difficult for each individual and has a substantial negative impact on the future lives of the parties, turns into a nightmare given the economic insecurities faced by women in Turkey (Uçan 2007). According to data from the Turkish Statistics Institute (TurkStat) in 2016,[11] women cannot truly be considered a part of the labour force, and they clearly lack economic independence. This reveals that the majority of women offer their labour for free in the household, as mothers and spouses. Add to this that until the Republic era, they had been entitled to only half the inheritance compared to men, that until 2002 they could only be employed with the permission of men, and that any earnings women generate are often confiscated by men since even today the traditional social outlook is that men

are the natural owners of property, and a stark picture of the trying economic conditions[12] faced by Turkish women can be seen clearly.

With a view to providing at least partial compensation to the spouse who had not been at fault or who had been at a lesser fault for such negative consequences that arose through the divorce, the Legislature made arrangements for compensation and alimony. Article 174 of the Turkish Civil Code grants the right to 'material compensation' (Maddi Tazminat) in cases where the spouse who had not been at fault or had been at a lesser fault had suffered in terms of her existing or expected interests. Article 175 granted the right to demand 'destitution alimony' (Yoksulluk Nafakası) for the spouse who suffered poverty as a result of the divorce, provided that he or she is not the party who is at graver fault. Instead of such a provision, the Turkish legislature could have opted to remove the provision on compensation from the law, as happened in Switzerland, and leave the divorce-related compensation claims to the jurisdiction of the general provisions of the Code of Obligations. This would render 'fault' irrelevant with respect to the maintenance obligation, replacing it with other concerns such as the claimant's needs and the economic standing of the spouses (Kılıçoğlu 2014, 16); (Özdemir-Oktay 2015, 41).[13] Even though both maintenance options are based on distinct grounds, they are essentially results of a specific 'caring institution' in the perspective of marriage (Schwenzer 1999, 167) (Öztan 2015, 802). Through the material compensation arrangement, the Turkish legislature introduced an 'alimony-like' mechanism[14] entailing payments that are subject to divorce-specific rules and criteria, rather than a conventional compensation arrangement covered by the Code of Obligations.[15]

1. Material Compensation and Destitution Alimony Arrangements in General

A. Material Compensation

For a claim for material compensation on grounds of divorce to be made, the first and foremost requirement is the existence of material damage caused by the divorce. In other words, the wealth of the individual should suffer. The Turkish Civil Code (TCC) Art. 174 refers to the loss of 'existing or expected interests' as the prerequisite for compensation claims. The loss of the contributions the spouses provide within the framework of the marital union, the rights obtained through the property regime agreement, and the benefits they derive through the use of the goods of the other spouse or work at the other spouse's workplace, are considered 'existing damages'. This also includes relocation costs and the expenses needed for new household goods as a result of leaving the shared house and the expenses incurred to compensate damaged

physical and mental health that resulted from ill treatment. (Tekinay 1990, 220,221) (Kılıçoğlu 2016, 162) (Feyzioğlu 1986, 454) (Köprülü ve Kaneti 1989, 192) (Zevkliler, Acabey ve Gökyayla 1997, 963). The loss of expected interests, in turn, refer to the loss of rights to inheritance in the most probable case of inheritance entitlement, the loss of pension or insurance that the spouse would have received upon the future death of the other spouse (Karahasan 1976, 524,525) (Tekinay 1990, 260) (Zevkliler, Acabey ve Gökyayla 1997, 963) (Büchler ve Spühler 1980, n. 27) and other lost opportunities incurred by leaving employment or higher education due to marriage.[16]

In reaching a decision on whether the claimant had incurred damages, the court judgements take into account the general social structure, the realities of life and the country, the improbability of the remarriage of the claimant spouse on the basis of his/her level of education and age, the possibility to employ other means to meet the claims, the length of the marriage, whether a child is left in the custody of the compensation claimant or not, (Tekinay 1990, 245) and the personal wealth and incomes of the spouses (Büchler ve Spühler 1980, n. 33).[17] However, this is not binding on the judges, because the mentioned criteria were not listed in the Turkish Civil Code (like in Art. 125 ZGB) after the reforms.The law prescribes only two criteria: "existing or expected interest" and "the fault of the claimant spouse". The judges have wide discretion in interpreting these criteria which gives rise to conflicting decisions (Örücü 2007a, 206).

B. Destitution Alimony

Destitution Alimony serves to prevent poverty that arises as a result of divorce. In this context, the legislature did not define the concept of 'poverty'. Hence, the doctrine assumes that the concept should be assessed by the judge with reference to the concrete case, the conditions prevailing in the country, and the principle of fairness. Yet often poverty is described as a situation where the spouse is unable to work, and where he/she cannot sustain her needs with her existing assets. (Feyzioğlu 1986, 397) (Köprülü ve Kaneti 1989, 195) (Zevkliler, Acabey ve Gökyayla 1997, 938) (Öztan 2015, 835) (Turhan 1993, 264)[18]

In Switzerland, where the provisions concerning compensation have been abrogated, and only post-divorce alimony (Art. 125/I ZGB) regulation is made, the judge is granted a substantial level of discretion in setting the alimony. The judge considers if the marriage has shaped the claimant's whole life (Hausheer 2007, 42) (Schwenzer 1999, 169) and takes into

account the financial standing of the alimony obligor (Hausheer 2007, 44) (Zevkliler, Acabey ve Gökyayla 1997, 967) (Schwenzer 2005, n. 1)[19]. Since Turkish law still contains provisions for post-divorce compensation, it is necessary to investigate if poverty is probable in spite of compensation when setting the alimony amount (Feyzioğlu 1986, 265) (Zevkliler, Acabey ve Gökyayla 1997, 939) (Turhan 1993, 268). If applicable conditions are present, post-divorce compensation and alimony can be demanded simultaneously. However, if just one is to be claimed, a claim for compensation may be more advantageous. Because the claim for compensation will also cover any subsequent alimony benefits (expected rights on top of existing rights, as well as other property rights) it is not subject to poverty as a prerequisite (Tekinay 1990, 265) (Feyzioğlu 1986, 265) (Zevkliler, Acabey ve Gökyayla 1997, 939).

2. Fault as a Requirement of Compensation and Alimony Provisions

Even though fault represents a major element for both maintenance obligations, it essentially serves as the basis of the compensation obligation. Fault refers to providing cause for divorce, and to the acts leading to divorce, through one's actions (Diezi 2014, 251) (Schwander 1937, 86).[20] In most cases, the faulty acts on part of one or both spouses lead to the dissolution of the marital union. In particular, adultery, an attempt on the other's life, misconduct and indignity, committing crime, and desertion constitutes such acts. For the cases brought forward based on these specific grounds to conclude with divorce, fault will be sought as a requirement. The 'fault' proven in such cases shall also constitute valid grounds for compensation (Schwander 1937, 57).

According TCC art. 174, if the spouses act in breach of their marital obligations, and such breaches lead to the irretrievable breakdown of the marital union, compensation obligations arise as a last resort to punish the spouse that caused the divorce due to his/her fault (Boele-Woelki 2004, 100). In cases where the spouse claiming compensation is found to be at fault, he/she is also punished by being deprived of the right to claim compensation. In this context, the spouse claiming compensation should either be 'at no fault' or 'at lesser fault' (TCC art. 174). [21]

It is not possible for the divorcing parties to claim compensation where neither of the parties is at fault, but where differences of opinion or psychological incompatibilities exist that lead to the irretrievable breakdown of the marital union (Jermann 1980, 56) (Öztan 2015, 808)[22]. In such cases, only alimony claims can be filed since fault is not a prerequisite of the alimony

obligation. On the other hand, the spouse that claims alimony should be either 'at no fault' or at least should not be at 'graver fault' (TCC art. 175).

Provisions regarding post-marital maintenance rights mention only the concept of 'fault' but do not contain any definition of various levels of faults such as 'lesser fault' and 'graver fault'. Moreover, the boundaries of no fault are still not set. Thus, the judges are free to determine the content of the fault concept and to decide which spouse is at less fault, equal fault or no fault. The judges that are to rule on post-divorce maintenance obligations should, above all, assess the faults of individual spouses (Ayiter 1977, 168) (Tekinay 1990, 259) (Örücü 2007b, 242). The judges have full discretion on how the claimant's acts of fault that may or may not have led to divorce, would affect the claim (Riemer 1977, 44). Identifying, assessing, and measuring fault alone is very difficult, if not impossible. That is why, as the judgement is based on the concrete case of the principle of fairness, widely different judgements are often issued (Jermann 1980, 67).

Given the difficulties in establishing the respective degrees of fault when both spouses are at fault, the judiciary duly proceeded to invent the concept of 'equal fault', which is not an element of the written law. But before presenting a clear picture for the Yargıtays' efforts to equalize faults, we first need to discuss how no fault, lesser fault, graver fault, and equal fault concepts are perceived in both Swiss law as well as the jurisprudence of the Yargıtay, and how the fault comparison is made.

A. The Fault Concept from the Perspective of the Judiciary

Even though it is rare in the aftermath of any divorce, at times it is possible for the party claiming compensation or alimony to be completely 'at no fault'. Being at no fault means the lack of causal relation between the claimant spouse's behaviour and the development of the grounds for divorce. In other words, no fault does not necessarily imply a complete absence of culpable behaviour.[23] According to the jurisprudence of the Swiss Federal Court under the previous Swiss legislation, a no-fault standing can occur in cases where the claimant's behaviour, although a breach of the obligations that arise out of the marital union, are deemed secondary compared to the actual events that led to divorce, or where they have been carried out in reaction to the initial acts on part of the other party[24]. In such cases, as a rule, the compensation ruling is not affected by such behavior.[25]

However, in most cases both spouses are said to be at fault and one would have been at lesser fault and the other at graver fault. Lesser fault refers to a level of fault of the spouse in the events that caused the divorce which is lower than that of the spouse filing a claim for compensation (Öztan 2015, 800) (Dural, Öğüz ve Gümüş 2015, 145). In most decisions, the Swiss Federal Court referred to this as 'slight fault'. In such cases, the judge would rule for a discount in alimony or compensation due to 'mutual fault' (birlikte kusur), rather than a complete rejection of the claim.[26] The Yargıtay's judgements, on the other hand, often refer to behaviour that could be considered 'no fault' or 'slight fault' as 'equal fault', and deprive the party who is thus deemed at equal fault of the right to claim compensation.[27]

Graver fault, on the other hand, refers to a case where the party claiming compensation had actually produced the causes of the divorce through his/her behaviour at a level in excess of that of the other spouse. That spouse loses his/her right to compensation.[28] At times, the Swiss Federal Court regarded even behaviour which has no effect on the divorce decision as a cause for the reduction of the compensation (Kılıçoğlu 2014, 18) (Tekinay 1990, 258) (Büchler ve Spühler 1980, n. 35) (Jermann 1980, 35). We can call such behaviour 'gross fault'' (illi olmayan ağır kusur) in order to distinguish it from causal behaviour which constitutes graver fault. However, the Swiss Federal Court did not apply the same perspective to alimony claims, allowing fault to affect the alimony only in cases where the claimant's faults are causally related to the divorce.[29]

B. The Concept of Equal Fault

Contrary to popular belief (Gülbahar 2006, 470), equal fault in Turkish law is not a concept invented by the Yargıtay. Equal fault is a concept initially used by the Swiss Federal Court in cases where both spouses had been at different degrees of fault, making it impossible to determine who was at 'graver' or 'less' fault.[30] When the judges reached the view that both spouses were at equal fault, such as in a case where both spouses cheated on the other,[31] they ruled that, as the parties had been at 'equal fault', they lost the right to claim compensation.[32] However, the Federal Court did not issue a wide range of judgments on equal fault. Given the grave consequence of the loss of the right to claim compensation, the Court was extremely cautious when using this concept, and had only rarely found parties to be at equal fault. In order to reach the conclusion that the parties were at equal levels of fault, the Court first required the spouses' faulty acts to be causally related to the events causing the divorce. Furthermore, the Court required a person claiming compensation to be at a clearly lesser degree of fault than the

person liable to give compensation. Only in such cases were the fault levels deemed to be 'unequal', providing justification for the compensation claim (Jermann 1980, 67). In Swiss law, the assumption that the entitlement to damages was completely eliminated in cases of equal fault was based on an interpretation of Article 151 aZGB (TCC art. 174). According to this line of thinking, the spirit of the law (ratio legis) necessitated that the party claiming compensation should be either free from fault or should have a lesser fault, akin to the case where the party that single-handedly caused the events that led to divorce would not be entitled to a compensation claim (Riemer 1977, 48) (Jermann 1980, 66).

III. THE YARGITAY'S EQUAL FAULT PRACTICE AND CASE LAW

In contrast to the Swiss Federal Court, the Yargıtay has made hundreds of judgments based on 'equal fault'. Although the Yargıtay often refers to this concept in divorce cases where both parties are at fault, the rulings reveal clear and major differences between the these rulings and those of Swiss Federal Court. This contrast can be seen as an indicator of the discriminatory treatment women suffer with respect to the consequences of divorce.

1. Equal Fault Judgments regarding Compensation Claims

A. Consideration of Reactionary Acts as Equal Fault

The first thing one notices of the general practice of the Yargıtay[33] is the inclination to assess whether the claimant's behaviour gives grounds to extinguish the claimant's right to compensation in isolation of the behavior of the other, without considering whether it was a reaction to behaviour by the other party. Both the local courts[34] and the Yargıtay often rule that slurs or curses by the woman, who cannot hide her feelings in response to the fault leading to divorce on the part of the cheating man who acts in violation of the loyalty obligation, constitute 'equal fault'. With reference to the actions of a woman cheated on by her husband, the Yargıtay ruled that

> 'the male defendant had cheated on his wife; but the female plaintiff in her turn insulted the man. Therefore, the parties have equal fault, and no compensation can be awarded.'[35]

The still prevailing patriarchal family structure in Turkey led to a state of affairs where the reactions of a woman in response to the interventions of the man's family in the marital union, or the man forcing the woman to live with his family, are not excused, and equal fault is ascribed

to both parties and compensation denied to the woman. Overturning a local court ruling which ascribed graver fault to the man, the Yargıtay ruled that

> '...the man forced the woman to live with his mother, and failed to provide an independent household, that he did not object in the face of the insults his mother and elder sister directed against his wife, and in response, the woman insulted the man by calling him "bald" among a group of people, belittling him'

and decided that fault levels of both parties were equal.[36]

In yet another ruling, the Yargıtay considered curses uttered by a woman due to being forced to live with the family of a man who was appointed to another province, and who failed to provide any financial support to her, as an instance of equal fault.[37]

B. Equalizing Fault through the Ambiguous Concept of 'Behaviour Betraying Trust'

Another symptom of the Yargıtay's efforts to present a case of equal fault is the development of the concept of 'behaviour betraying trust'. In most of its judgements[38] where the Yargıtay deny compensation to women it states that, 'in the events leading up to the divorce, the woman is also at fault due to her behaviour betraying trust.' For example, in a case where the local court found the man to be at graver fault, the Yargıtay reversed the decision, arguing that

> 'the female plaintiff engaged in behaviour betraying trust. In the face of these facts, the parties have equal fault in the incidents leading up to divorce.'[39]

In this way the Yargıtay denies women's claim for compensation based on a vague concept which cannot even be clearly articulated by the court. Unfortunately in many other similar judgements[40] the behaviours of a husband, such as failing to procure an independent household, to provide care in the face of his wife's illness, kicking the wife out of the house, and insulting her, have been treated as equal fault because of the woman 'betraying trust'.

C. Ascribing Equal Fault despite Violent Behaviour on the part of the Man

Even in cases of violence against the woman, the Yargıtay is often observed to rule in the same vein. A substantial portion of divorces in Turkey occur as a result of violence (which can take physical, economic, or psychological forms)[41] (Ersöz 2011, 259). Yet, the rulings[42] reveal a tendency to impose equal fault on the woman by emphasizing certain actions in the face of the man who is committing violence towards his spouse. In this regard the 'use of insulting words and acts' against a husband by an abused wife[43] and 'avoiding sexual relations with a husband

for long period' as a response to his insulting and humiliating behaviour[44] are regarded as sufficient reasons to assume equal fault. For example, in a case where the local court assigned the whole fault to the man, the Yargıtay reversed the decision stating that

> 'as per the gathered evidence, it has been understood that the man committed violence against his wife, failed to provide an independent house, and that the woman declared her lack of desire for her husband and insulted him, and hence the marital union was broken down by the parties who have equal fault'[45]

The rulings do not focus on the matters such as whether man's physical violence is verbal or the frequency of the violence, and ignore the fact that the man committing the violence is often actually at 'graver fault' in most of the cases. In other words, numerous rulings of the Yargıtay try to equate the fault on the part of the woman, such as insults, with violence, rather than simply embracing the fact that violence is an inexcusably graver fault.

At times, the Court can present interesting interpretations, claiming that the effects of violence would, after a while, dissipate. In a case where the woman left the family house due to violence she suffered:

> '…a period of one and a half years had passed since leaving the house, and the acts of beating and insult lost their effect…'[46]

At times, in a curious perspective, the Yargıtay overturns local courts' brave compensation awards in favour of the woman, employing equalizing fault as the means to do so. For example,[47] in a concrete case, the local court had found that both parties engaged in violence and insults against each other, but that the man had nonetheless committed more violence toward the woman, and proceeded to award material and non-material compensation to the woman. The Yargıtay, in turn, overturned that ruling, arguing that

> 'the evidence does not make it clear which party committed the higher amount of violence; furthermore, the court's justification regarding the assignment of violence and fault to individual parties is contradictory in and of itself. Therefore, it should be assumed that the parties had equal fault regarding the incidents causing the divorce. In case of equal fault, on the other hand, it is not possible to award material and moral compensation as accessories to divorce.'[48]

The application of 'equal fault' for women who are exposed to violence, depriving them of the right to compensation is unacceptable.

D. Failure to Apply the Equal Fault in the case of a Woman's Violation of the Loyalty Obligation

Embracing a tendency to utilize even the most insignificant insult on the part of the woman as a means to assign equal fault against the unfaithfulness of man, the Yargıtay nonetheless refrains from such a perspective in cases where the woman is the one that is in breach of the loyalty obligation. In a 2014 judgement, the Yargıtay made a huge effort to not assume an equal fault stating that

> 'in the face of the female plaintiff's graver fault in the form of violation of the loyalty obligation, the defendant husband is understood to be at a lesser fault for the insults he uttered during their quarrel.'[49]

A woman who acts in breach of the loyalty obligation is considered to be at 'graver fault', and hence the man is not deprived of the right to seek compensation. The reason for doing so lies in the Yargıtay's view that adultery on part of the woman is deemed inexcusable as per the social order as expressed in one of its judgements with following words

> 'the ruling on material and non-material compensations, awarded to compensate for the infidelity suffered by the man, and to secure the moral order of the society, has been upheld completely.'[50]

According to the Yargıtay, the breach of the loyalty obligation cannot be compared even to acts of violence:

> 'It is certain that infidelity has an even more destructive impact on the marital union, compared to the acts of violence and insults.'[51]

Accordingly the man would not be regarded as having equal fault even though he physically abuses his wife:

> 'it is understood that the defendant (man) committed physical violence against his spouse, whereas the plaintiff acted in breach of the loyalty obligation. In this context, the plaintiff is considered to be at graver fault in the incidents causing the divorce.'[52]

It is sufficient to establish that the woman had acted in breach of her loyalty obligation. Once that point is established, other experiences that took place in the marriage, as well as the behaviour on the part of the man, are unimportant! Compared to that, in its 1999 judgement, the Swiss Federal Court engaged in an assessment to see if the woman's behaviour was of a secondary nature compared to acts that caused the divorce, and could ascribe to it slight fault status rather than graver fault status, leading to a reduction of compensation, rather than complete dismissal.[53]

2. Fault Rulings with Respect to (Now Denied) Alimony Claims

Applying strict conditions for alimony demands, the Yargıtay refrains from easy awards of alimony. In its rulings, the Court decided that working as a cleaning worker[54] or being a housewife[55] are not sufficient reasons for assuming that the women faced poverty due to divorce and overturned the local courts ruling requiring an assessment of other conditions. However, the Yargıtay fails to notice that the required assessment of other conditions are not favourable to women. In a 1989 ruling the Court refused the alimony claim with following justification

> '…since there are no documents or information attesting an obstacle to the employment of the plaintiff, merely residence in a district and being a woman should not automatically lead to an entitlement to a destitution alimony claim.'[56]

It is not easy for a woman who has stayed at home throughout her marriage and who feels like a fish out of water in the aftermath of her divorce, to find employment in a small district. One cannot simply assume that the man and the woman can find employment under the same conditions. Although both of the spouses are employed, house chores, which are often ignored by society, economic difficulties, which are a result of lesser progress at work due to working in the home, and the belief that ownership should belong to men, all contribute to women's poverty (Aydemir ve Aydemir 2011, 46).

A. Considering the Ambiguous Concept of 'Behaviour Betraying Trust' as Graver Fault

Even though the Yargıtay takes a so-called prudent approach in affirming alimony demands, while in the past[57] it did not have a very welcoming approach to alimony claims in cases where the parties were at equal fault, more recently the Court seems to have moved on to a new paradigm and does not deny the demands even where equal fault applies.[58] However, it seems to have found another way to deny alimony, using the basis that the woman was at 'graver fault' in cases that would otherwise simply be written off as cases of equal fault. In this vein, the Court now refrains from equal fault rulings, and tips the rulings to assign graver fault to women, even though the cases are essentially equal-fault cases.

In most rulings that deny alimony claims for 'graver fault', the Yargıtay employs certain ambiguous concepts such as 'behaviour betraying trust', which, as noted above, is employed to assign equal fault in rulings on compensation. In a 2010 judgement, the Yargıtay rejected the alimony claim of a women with following justification

> '...it is evident that the woman engaged in behaviour betraying trust, and was at graver fault in events which led to the breakdown of the marital union.' [59]

B. Assignment of Graver Fault to Women Who Violate the Loyalty Obligation

Taking a tough stance regarding women's acts in violation of the loyalty obligation, the Yargıtay often chooses to deem the woman's behaviour to be of graver fault without attempting to assign equal fault to any behaviour on part of the man (who may himself have committed a violation of the loyalty obligation). In consequence, the Court duly denies alimony claims. In an incident where both spouses cheated on each other, the Yargıtay ruled that

> 'it is necessary to accept that the plaintiff (woman) was at graver fault compared to her spouse in terms of leading to the breakdown of the marital union; yet, the assumption of "equal fault" on the part of the parties, and the assignment of destitution alimony for the woman on these grounds, is not right.'[60]

Once a woman's act in violation of the loyalty obligation is revealed, even violence by a husband[61] or his negligence in relation to his duties associated with the union[62] would not prevent the female being ruled as being at graver fault.

In cases where the violation of the loyalty obligation was deemed a gross fault without causal relation with the divorce (such as the violation of the loyalty obligation after filing for divorce), the Swiss Federal Court employed a two-pronged approach with respect to the alimony and the compensation claim, applying a discount for the compensation claim but not allowing the act to affect the alimony claim. Unfortunately, the Yargıtay does not make any such distinction, and has ruled that the violations of the loyalty obligation by women are gross fault and rule out the right to alimony. The position taken in this regard by the Assembly of Civil Chamber of the Yargıtay is particularly interesting in a case where the local court's ruling that the breakdown of the marital union was caused by the male defendant (failure to perform the duties required for the union, insulting the wife), and that the female plaintiff's alimony and compensation claims were to be accepted, was overturned and sent back to the local court. This was on the grounds that the female plaintiff had been involved in an affair during the divorce proceedings. The local court, however, insisted on its original ruling. In response, the case was then reviewed by the Assembly of the Civil Chamber of the Yargıtay. Even though some of the members argued that events that occurred after the filing of the case could not be taken as the basis of the fault assessment, the ruling still stated that the woman was at gross fault, and should be denied all her demands.[63]

C. Assignment of Gross Fault to the Woman despite Violent Behaviour on part of the Man

The perspective does not change even if the woman is exposed to violence. 'Insults' made in reaction to such violence are considered to constitute 'graver fault' to provide justification for rulings stipulating equal fault for both parties. For example a local court assumed equal fault on the part of both parties and rejected the ruling in favour of a destitution alimony saying:

> 'the female defendant insulted her husband, whereas the male plaintiff forced his wife to live with his family, and committed physical violence against her. In the face of these facts, the woman is at graver fault in the incidents leading up to divorce. '[64]

It is striking that even in cases where both parties are involved in violent behavior, 'equal fault' is not assumed and the alimony claim is rejected as the woman is considered to be at graver fault.[65]

3. The State of Affairs Brought about by the Rulings

In the light of the compensation rulings issued by the Yargıtay in divorce cases, it is evident that behaviour which would be deemed to be of secondary or slight fault, and which in Swiss practice would only have been considered as grounds for a discount of the compensation, are *always* considered grounds for denying entitlement by the Yargıtay which is observed as not applying such a discount on the basis of 'mutual fault',[66] but instead[67] tries hard to assign 'equal fault' and to deny compensation. This often causes suffering on the part of the divorcing woman. This is clear in the following example:[68]

Having married in 1989 and given birth to a child named Ö in 1990, the female plaintiff filed for divorce against her husband, on the grounds that he did not perform the obligations assigned by the marital union, that he cheated on her with a woman named F., and that he beat her numerous times. The local court found that fault lay entirely with the male defendant, on the basis that he cheated on, beat, and cursed the plaintiff, and approved the case filed, ruled for the divorce of the parties, and for alimony of TRL 125,000,000 for the plaintiff and TRL 75,000,000 for the child, as well as material compensation of TRL 4 billion and non-material compensation of TRL 4 billion. The Yargıtay, in turn, overturned the ruling on the grounds that:

> 'the evidence gathered reveals that the parties have equal fault in the events leading to the breakdown of the marital union. No material and non-material compensation can be awarded for a spouse who has equal fault. As the requirements of article 174/1-2 of Turkish Civil Code are not met, the material and non-material compensation claims of the plaintiff should have been denied, but were accepted as stated, an overturning ruling was required...'

However, as the local court insisted on its ruling, and the case was then brought to the Assembly of the Civil Chamber of the Yargıtay, which stated:

> '...it is evident that the female plaintiff told others that she did not love and want her husband, whereas the male defendant beat his wife and cheated on her with another woman named F... in the concrete case, the parties should be assumed to have equal fault in the incidents leading up to the breakdown of the marital union; hence it is not legally possible to award material and non-material compensation for the spouse with equal fault, as per article 174 174 of Turkish Civil Code...'

One cannot realistically expect a woman to love a husband who cheats on and beats her, but the Yargıtay predictably deemed this as an instance of equal fault. The most important consequence of that ruling is that the woman, who is unemployed and left alone to take care of her child, is deprived of the alimony of TRL 125,000,000, material compensation of TRL 4 billion, and non-material compensation of TRL 4 billion that was awarded to her by the local court as a maintenance for her efforts in a marriage that lasted 17 years. She was deprived of her existing interests, the contributions provided within the framework of the marital union, the rights obtained through the property regime agreement, the benefits they achieved through the use of the spouse's property, and the earnings she received through her employment at her spouse's workplace. Additionally, she had to pay, from her own accounts, the costs of the treatment of her mental health, which had deteriorated due to ill-treatment, the move to leave their shared residence, and new house goods and furniture. The consequences of assigning equal fault to the woman are not, by any means, limited to these examples. The woman also lost expected benefits, inheritance entitlements, pension payments, or insurance benefits granted to her in the future upon the death of her spouse. Therefore, through its own rulings based on the principle of 'equal fault', the judiciary ignored the criteria it underlined in its own rulings with reference to the need to award compensation (the facts about the general structure of the society, the country, and the realities of life).

Unfortunately, the alimony rulings of the Yargıtay present a similar picture. Even though an initial glance gives the impression that the court has a more amenable outlook in its rulings, given that it does not deny alimony claims in cases of equal fault, the actual picture is bleaker. In the face of the trying criteria imposed by the Yargıtay, a woman claiming alimony can perhaps prove that she will face poverty as a result of the divorce. Yet, such proof does not suffice; the Yargıtay can still label any behaviour on part of the woman as a graver fault, and can deny her claim even though she is set to face poverty. In such cases, the woman is deprived of the alimony to provide her basic subsistence, with reference to behaviour which can be considered equal fault in the face of initial behaviour on the part of the man.

IV. CONCLUSION

Even though the progress achieved in Turkish law since 2002 is promising, the general framework regarding post-marital maintenance obligation still remains outdated.

The primary reason for this lies in the fact that the current regulations are borrowed from pre-reform Swiss law. In the aftermath of the reforms, Switzerland, introduced major changes regarding the consequences of divorce. They also abrogated the provisions regarding compensation and removed 'fault' from among the list of determining criteria concerning the alimony requirement. In Turkish law, on the other hand, the provisions governing these two maintenance obligations, which, in practice, function as a single means of contribution, are still in place. Furthermore, 'fault' still plays a major role with respect to both obligations.

The analysis reveals that, with respect to the interpretation of such outdated provisions which had, in the past, been part of Swiss law, Turkish law assumes a different track to that of the Swiss Federal Court, leading to discriminatory rulings regarding the faults on the part of the divorcing arties. In many cases the Yargıtay exaggerates women's no or slight fault, depriving women of the right to claim full or discounted compensation. Moreover, the Yargıtay utilizes ambiguous concepts such as 'behaviour betraying trust' to equalize the fault with the man who commits violent acts. Similarly, unforgivable deeds such as the violation of the loyalty obligation are handled differently for both genders. The woman who acts in violation of the loyalty obligation is considered at 'graver fault', and loses not only her claim to compensation, but also her entitlement to alimony.

The exceedingly extensive outlook that has been developed by the Turkish judiciary with respect to the concept of 'equal fault' on the basis of the practice of the Federal Court, and the frequent utilization of such a concept that can be deemed to discriminate against women, is unacceptable. Lege ferenda, the prerequisite of justice, is a perspective disregarding the claimant's fault in terms of establishing the compensation obligation, save for cases where the fault intentionally and singlehandedly destroyed the marital union. However, for years, the Yargıtay has been reversing local court decisions and deciding on the basis of equal and graver fault, with a perspective that discriminates against women.

This reflects the actual standpoint of Turkish society on gender equality. The majority of local courts reach verdicts coherent with Yargıtays' view to ensure that their decisions are upheld by Yargıtay. However, as the cases we discussed show, local courts might decide in

support of gender equity as a result of different interpretation of 'fault' concept. An explanation for this discrepancy between the decisions of local courts and the Yargıtay is not easy task and requires sociological research. One might argue that the discrepancy is a result of the difference in their decision making process. The Yargıtay makes decisions mostly based on the files, whereas local courts are engaged in a process where they can experience the circumstances of the spouses getting divorce, and plainly see their unjust suffering and take all these into consideration. As a result local courts are able to escape the influence of outdated judgments. The Yargıtay should reconsider its approach, which is not in line with the socio cultural fabric of the society, otherwise it will hinder the purpose of the law to modernize the society. Moreover, its approach constitutes a violation of the obligation to secure constitutionally guaranteed gender equality (Turkish Constitution, art. 10/III), and exposes women to indirect discrimination instead of entitlement to compensation and alimony. In the Constitution, the duty to ensure gender equality is assigned to more than just the legislature. The Yargıtay should also be deemed a subject of that obligation. Therefore, such practices cannot be reconciled with either the 'gender equality' provisions of the Constitution, or the principle of the 'equality of spouses' stipulated by the Turkish Civil Code dated 2002, and should be discontinued immediately.

[1] TCC article 174: 'The spouse who had not been at fault or who had been at lesser fault, and whose existing or expected interests were harmed due to divorce, can claim for material compensation from the spouse at fault. The spouse whose personal rights are violated because of the events that led to divorce, may request the payment of an appropriate amount of money as pecuniary damages (Mevcut veya beklenen menfaatleri boşanma yüzünden zedelenen kusursuz veya daha az kusurlu taraf, kusurlu taraftan uygun bir maddî tazminat isteyebilir. Boşanmaya neden olan olaylar yüzünden kişilik hakkı saldırıya uğrayan taraf, kusurlu olan diğer taraftan manevi tazminat olarak uygun miktarda bir para ödenmesini isteyebilir.)'

[2] TCC article 175: 'Provided that he/she is not at a graver fault, the spouse who will suffer poverty due to divorce may claim for indefinite alimony to help with her subsistence from the other spouse in line with the latter's financial strength. No fault requirement shall apply for the spouse who shall incur the alimony obligation. (Boşanma yüzünden yoksulluğa düşecek taraf, kusuru daha ağır olmamak koşuluyla geçimi için diğer taraftan mali gücü oranında süresiz olarak nafaka isteyebilir. Nafaka yükümlüsünün kusuru aranmaz)'

[3] The addition of the phrase 'and is based on the equality of spouses' to expand the phrase 'family is the foundation of Turkish society', which can be found in the original form of article 41 of the 1982 Constitution, was only made possible in 2001 (with Law, no. 4709 dated 3/10/2001).

[4] That provision was added to article 10 of the 1982 Constitution in 2004 (with Law no. 5170 dated 7/5/2014).

[5] The changes and developments in Turkish Family law aiming the modernization and westernization of the society didn't really take much notice of the socio cultural fabric. (Türk 2001, 18) (Örücü 2007a, 208).

[6] MP Orhan Bıçakçıoğlu's remarks voiced during the debate on the regime of participation in acquired property drew substantial criticism from the public: http://www.oncevatan.com.tr/yasam/paramizi-karilara-yedirtmeyiz-h60491.html.

[7] The new divorce law provisions, as introduced on 26 June 1998 and that entered into force on 1 January 2000, amended the provisions of ZGB Article 90-149 and abrogated the provisions of Article 150-158: Amtliche Sammlung 1999, p. 1118.

[8] In many countries -like Germany- the principle of fault plays no longer a role in divorce (Hausheer, Yeni 2007, 32); (Boele-Woelki 2004, 83, 101). However, there are exceptional regulations (for example § 1579 BGB, Art. 125/III ZGB) which allow a fully or partially refusal of post-divorce maintenance, if the situation is 'obviously contrary to justice'. This is mostly criticized as an attempt to bring the principle of 'fault' from the backdoor to the

maintenance law again (Schwenzer, Praxis 1999, 172). "Exceptional hardship" appears even in CEFLs' (Commission on European Family Law) "Principles of European Family Law Regarding Divorce and maintenance between Former Spouses" (Principle 2:6). Although it is pointed out that this provision should not be interpreted widely and should only be applied in exceptional cases (Boele-Woelki 2004, 103) it is still worrying (Örücü 2007b, 245). Even "Model Family Code" includes a regulation (Art. 1:28, j and k) indicating that fault can affect the maintenance (Schwenzer 2006, 46) (Örücü 2007b, 245).

[9] BGE (Entscheidungen des Schweizerischen Bundesgerichtes, Amtliche Sammlung) 127 III 138.

[10] In Turkish Law not only Yargıtay, but also The Constitutional Court (Anayasa Mahkemesi) was influenced by "long established traditions" and followed conservative interpretation of the family and the place of the women in it (Örücü 2007a, 187).

[11] The employment rate among women is as low as 26%. In turn, 55.4% of those employed, work in the service (vs. agriculture and industry) sector. The low level of inclusion of women in the labour force is most often explained by their involvement in household chores, at a rate of 55.3% (www.tuik.gov.tr)

[12] For a similar argument please see (Örücü 2007a, 197, 205).

[13] For an opposing view see (Ceylan 2006, 73,74).

[14]Ibid. (Örücü 2007a, 204)

[15] The legal character of compensation specific to divorce, and the fact that they are regulated by the Civil Code in contrast to conventional rules on tortious acts (Code of Obligations article 49 and on), as well as the legislative's justification for taking this route, are matters of dispute in the literature on the doctrine. See (Arbek 2005, 119); (Kılıçoğlu 2014, 18).

[16] Y. 2. HD. 1992/10859 E., 11841 K. (Uyar 2002).

[17] These criteria are not to be found in code but are established by rulings: BGE 116 II 109 E. 21; HGK (General Civil Assembly of the Yargıtay), 27.5.1992, 2-255/352 (YKD., 1992, v. XVIII, p. 1526); (Jermann 1980, 58) (Hausheer, ZBJV 1986, 55 and on).

[18] 2. HD.1994/5220 E., 5710 K. (www.kazanci.com.tr)

[19] BGE 127 III 138.

[20] BGE 79 II 133, 134.

[21] BGE 117 II 519; 521; 117 II 211, 214.

[22]BGE 79 II 133; For an opposing view see (Karahasan 1976, 524,525); (Tekinay 1990, 259).

[23] BGE 98 II 161; BGE 93 II 287; 2. HD., 1992/7261 E., 7408 K. (YKD 1992, V. XVIII, 14).

[24] BGE 71 II 52; BGE 79 II 134; BGE 98 II 10; BGE 90 II 71; BGE 88 II 140; (Jermann 1980, 52); (Dural, Öğüz ve Gümüş 2015, 145); For other rulings see (Tekinay 1990, 257,258).

[25] If the judge deems it necessary, a discount on compensation alone can be applied (Jermann 1980, 52) (Schwenzer 1990, 8); BGE 99 II 129; 99 II 353; 95 II 289 (Tekinay 1990, 258) (Turhan 1993, 252).

[26] For compensation see, BGE 99 II 129, 99 II 353; For alimony see, 98 II 13.

[27] See further p. 13 ff.

[28] BGE 99 II 355 (Jermann 1980, 54,56); Similar rulings: 2. HD. 2015/24240 E., 3457 K.; 2014/139 E., 10597 K.

[29] ZWR, p. 312; BGE 95 II 289; An opposing ruling: BGE 89 II 65.

[30] BGE 85 II 5.

[31] BGE 2 I 500.

[32] 2. HD. 1956/4710 E., 1956 K.; 1998/3679 E., 5484 K. (Özuğur 2010, 985); 2. HD. 2013/10048 E., 1573 K.; 2016/17889 E., 13836 K.; 2016/13242 E., 12476 K.; 2013/15687 E., 28286 K. (Zevkliler, Acabey ve Gökyayla 1997, 966); 2. HD. 2013/10048 E., 1573 K., 2016/17889 E., 13836 K.; 2016/13242 E., 12476 K.; 2013/15687 E., 28286 K.; With reference to the same view held by the pre-reform Swiss Federal Court on the basis of its rulings, see (Jermann 1980, 67) (Schwander 1937, 86); BGE 2 I 500; BGE 38 II 54.

[33] The main database browsed to obtain data for this study consisted of 29.249 Court of Appeals rulings.

[34] For the judgements before 2003 local courts imply 'Asliye Hukuk Mahkemeleri' (Civil Courts of First Instance), whereas for the judgements after 2003 local courts imply "Aile Mahkemeleri" (Family Courts). Aile Mahkemeleri -regulated by Law No. 4787 dated 09.01.2003- examine the cases related to family law. In some provinces where no family courts could be established these cases are still examined by Asliye Hukuk Mahkemeleri.

[35] 2. HD. 2012/25759 E., 23101 K.; In the same vein; 2. HD. 2014/6487 E., 25808 K.; 2010/7953 E., 9213 K.; 2012/1065 E., 8272 K.; 2012/20753 E., 6851 K.; Opposing ruling; Yargıtay, Assembly of Civil Chamber. 13.4.2011, 2-751 /96.

[36] 2. HD. 2014/16160 E., 29 K.;

[37] 2. HD. 2014/17558 E., 17549 K.

[38] 2.HD. 2006/20989 E., 16560 K.; 2007/6372 E., 7489 K.; 2010/1178 E.; 12569 K.; 2006/16748 E., 5624 K.; 2013/22226 E., 5557 K.

[39] 2. HD. 2012/417 E., 18148 K.; Similar rulings: 2011/9624 E., 7630 K.; 2010/17843 E., 17569 K.

[40] 2 HD. 2011/10741 E., 8532 K.; 2013/21537 E., 4160 K.

[41] Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series, No. 210, Istanbul, 11.V. 2011: https://rm.coe.int/168008482e.

[42] 2. HD. 2013/10048 E., 1573 K.; 2016/17889 E., 13836 K.; 2016/13242 E., 12476 K.; 2013/15687 E., 28286 K.; 2010/13669 E., 19356 K.; Opposing rulings, 2. HD. 2011/5490 E., 6426 K.; 2009/20327 E., 21546 K.
[43] 2. HD. 2004/1880 E., 3243 K.
[44] 2. HD. 2010/16444 E., 12656 K
[45] 2. HD. 2010/21246 E., 21149 K.
[46] 2. HD. 2002/5757 E., 6722 K.
[47] 2. HD. 2011/12580 E., 2012/8167 K.
[48] In the same vein, 2. HD. 2011/13601 E., 2012/10028 K.
[49] 2. HD. 2014/7064 E., 17991 K.
[50] 2. HD. 2015/3573 E., 18310 K.
[51] 2. HD. 2015/6809 E., 21108 K.
[52] 2. HD. 2010/20799 E., 1071 K.
[53] BGE 99 II 356.
[54] 2. HD. 1997/7507 E., 8788 K.
[55] 2. HD. 2014/763 E., 3409 K.
[56] 2. HD. 1989/9377 E., 10663 K.
[57] 2. HD. 1998/ 10182 E., 11805 K.; 2004/9118 E., 10229 K.
[58] '…since it is established that the woman is not the party with the graver fault, that she does not have any income or assets, and that she will face poverty due to the divorce, it is necessary to assign destitution alimony of a suitable figure, to cover the living expenses of the woman': 2. HD. 2016/7741 E., 1217 K.; Similar rulings: Assembly of Civil Chamber., 27.4.2005, 245/289; Assembly of Civil Chamber., 2.5.2007, 2-236/246; 2. HD. 2016/17889 E., 13836 K.; 2006/12172 E., 18449 K.; 2009/11592 E., 1356 K.; 2016/7741 E., 1217 K.; 2016/17721 E., 1434 K.; 2016/7741 E., 1217 K.
[59] 2. HD. 2010/4778 E., 5429 K.; 2002/6750 E. 7499 K.
[60] 2. HD 2012/22685 E., 29821 K.; 2012/8984 E., 28586 K.
[61] 2. HD. 2010/4778 E., 5429 K.; In the same vein: 2. HD. 2014/4960 E., 14824 K.; 2014/3193 E., 13871 K.
[62] 2. HD. 2014/10715 E., 21510 K.
[63] Yargıtay, Assembly of Civil Chamber 2013/2-604 E., 38 K.; Yargıtay, Assembly of Civil Chamber 2008/2-698 E., 711 K.; Yargıtay, Assembly of Civil Chamber 2010/2-636 E., 680 K.; Yargıtay, Assembly of Civil Chamber 2011/2-403 E., 509 K.
[64] 2. HD. 2012/22792 E., 8553 K.; For a similar ruling: 2. HD. 2013/19259 E., 24620 K.
[65] 2. HD. 2015/24613 E., 3307 K.
[66] A discount on the grounds of mutual fault is accepted on the basis of the nature of material compensation as a means to compensate against tortious acts. Even though this perspective is far from settled, the overall majority of the doctrine argues that the tortious act component of the compensation framework is essential. See (Hinderling 1967, 127) (Jermann 1980, 911) (Büchler ve Spühler 1980, n. 29) (Schwander 1937, 86) (Öztan 2015, 801) (Kılıçoğlu 2014, 18).
[67] Even in the days when article 143 of the former Turkish Civil Code was in effect, requiring a 'fault-free' posture on part of the compensation claimant spouse, 'mutual fault' was argued to be grounds for a discount on compensation (Egger 1947, 229) (Karahasan 1976, 525).
[68] Yargıtay, Assembly of Civil Chamber 2006/2-37 E., 28 K.

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